

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

ROBERT LEWIS,	:	
Plaintiff,	:	CIVIL ACTION NO. 14-4693
v.	:	
	:	
CAROLYN COLVIN, Acting	:	
Commissioner of Social Security,	:	
Defendant	:	
	:	

ORDER

AND NOW, this 12th day of September 2016, upon careful and independent consideration of Plaintiff's Request for Review (Doc. No. 8), Defendant's Response (Doc. No. 10), the administrative record, and the Report and Recommendation of United States Magistrate Judge David R. Strawbridge (Doc. No. 14) to which there were no objections, the Court finds that the administrative record does not contain substantial evidence to support the administrative law judge's findings of fact and conclusions of law.¹

¹ The Court shares the concerns raised by Magistrate Judge Strawbridge in his thorough and well-reasoned Report and Recommendation. Primarily, the record does not support the ALJ's initial determination that Plaintiff's fibromyalgia was not a severe impairment at Step Two of the sequential analysis. Moreover, the ALJ's alternative rulings at Steps Four and Five of the sequential analysis lack the support of substantial evidence. The ALJ's residual functional capacity analysis and hypothetical to the vocational expert relied heavily on the medical opinions by Drs. Bree and Klufas. The ALJ, however, "cherry-picked" from those opinions by failing to account for all of the limitations imposed by the doctors. Moreover, the ALJ failed to resolve the fact that the portion of Dr. Bree's opinion to which she accorded "great weight" only found Plaintiff capable of sitting and standing for up to seven hours in a work day, which is less than the eight-hour requirement for substantial gainful activity done on a "regular and continuing basis." See Bennett v. Barnhart, 264 F. Supp. 2d 238, 257 (W.D. Pa. 2003). Consistent with the reasoning of the Report and Recommendation, the Court finds that remand is appropriate.

ACCORDINGLY, it is hereby **ORDERED** that the Report and Recommendation is **APPROVED** and **ADOPTED**. Plaintiff's request for remand is **GRANTED**, and this matter is **REMANDED** to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 405(g) for further proceedings consistent with the Report and Recommendation.

It is so **ORDERED**.

BY THE COURT:

/s/Cynthia M. Rufe

CYNTHIA M. RUFE, J.